GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the workmen and the management of Ryots Agricultural Produce Co-operative Marketing Society Rice Mills, Mandya.

Award of the Labour Court, Bangalore—published

Read the following papers :—

(1) Letter No. 988/68-69, dated 28th November 1968 from Shri M. K. Srinivasa Iyengar, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 28th day of November 1968.

PRESENT :

Sri M. K. Srinivasa Iyengar, B.SC., LL.B., *Presiding Officer.*

Reference No. 55 of 1967

Workmen represented by the Secretary, Mandya District General Workers' Union, MC Road, Mandya.

I Party.

Vs.

The Management of Ryots Agricultural Produce Co-operative Marketing Society Rice Mills, Mandya.

II Party.

Reference : Government Order No. LMA 399 LLD 67, Dated 28th June 1967.

AWARD

The Government of Mysore being of the opinion that an industrial dispute existed between the workmen and the management of Ryots Agricultural Produce Co-operative Society Ltd., Rice

Mills, Mandya have, by their Order No. LMA 399 LLD 67, dated 28th June 1967 referred the following dispute for adjudication by this court :—

> "Whether the Management of Ryots Agricultural Produce Co-operative Marketing Society Rice Mills, P.B. No. 10, Mandya is justified in terminating the services of Sri Syed Abbas, Mill Driver from 21st October 1965 ? If not, is Sri Syed Abbas, Mill Driver entitled for reinstatement with back wages and continuity of service with effect from 21st October 1965 ? ".

2. Syed Abbas was a driver in the Rice Mills and by a memo dated 21st October 1965 he was accused of having removed a plank of the separator speeding box of Dandekar machine on the night of 20th October 1965 and that for about two months prior to it he was causing damage to the machinery of the mills, and was asked to give his explanation. He was also suspended from work. He gave a representation in writing and requested that an enquiry may be held. A dispute was raised by the Mandya District General Workers Union in this behalf. During the conciliation proceedings it transpired that he had been dismissed from service by an order, dated 1st December 1965 with effect from 21st October 1965. On the report submitted by the conciliation officer the Government has referred the dispute in regard to the dismissal of the workman.

3. In the claim statement that came to be filed it was contended that the dismissal was without any enquiry and the dismissal was illegal and unjustified and *malafide.*

4. In the counter statement filed by the II Party on 23rd September 1967 it was urged that the worker could be represented only by a registered union and the union had not been registered in accordance with law. It was contended that according to the reference the cause had been sponsored by the workmen and not the Union. While submitting that it did not propose to rely merely on these technicalities it was pleaded that the reference had been brought in a manner not permissible by law and therefore was not maintainable. It was asserted that throughout, the service of Syed Abbas was unsatisfactory and he deliberately started disobeying the orders of II Party in October 1965 and causing damage to the machinery of the rice mill and his relationship with his co-workers was not satisfactory and as there were large number of complaints he was kept under suspension by a memo. dated 21st October 1965. It was stated that thereafter he had joined service in the Malavalli Taluk Agricultural Co-operative Marketing Society and had not notified his change of address and therefore no further enquiry could

left the services of the II Party and this conduct indicated that he had left the services. It was pleaded that the I Party had admitted that there was no termination and the reference had been made on an incorrect representation of facts. As Syed Abbas had taken up service in the Malavalli Society and earning his monthly payment it was pleaded that he was not entitled to any of the reliefs. The I Party filed a reply on 9th October 1967 denying the plea that Syed Abbas had voluntarily left the service and pointed out that what had been stated in the claim statement was that there was no order of termination and not there was no termination.

5. Thereafter on 30th November 1967 the II Party filed an additional statement. In that the averments in regard to the plea that the dispute is not properly raised and the reference was bad made in the earlier statement was reiterated and it was urged that as the termination had been contended to be without an enquiry the matter may be sent back for holding necessary enquiry by the II Party. It was further stated that long after suspension it became known that Syed Abbas had joined the Society at Malavalli on a permanent basis and his where-abouts could not be known and no enquiry could be held. It was stated that these preliminary objections may be heard before proceeding in the matter and the ultimate prayer was that the matter should be referred to it for necessary enquiry. On that day the matter was heard by my learned predecessor and obviously as the course suggested by the II Party was not permissible, the request was not granted and issues were framed. The following are the issues framed :—

(1) Whether the referred dispute is an industrial dispute ?

(2) If not, has this court jurisdiction to adjudicate upon it ?

(3) Can the First Party Union represent the aggrieved workman ?

(4) Does the First Party prove that the services of the aggrieved workman have been terminated by the second party otherwise in due course of law ?

(5) Does the II Party prove that the aggrieved workman has left his job voluntarily ?

(6) Does the second party prove that it has cancelled the suspension order passed by it on 21st October 1965 ?

(7) What is the date of termination of the services of the aggrieved workman ?

(8) Is he entitled to be reinstated with or without back wages ?

(9) What Award ?

6. On 23rd January 1968 which was one of the dates to which the case had been posted for hearing the I Party filed a statement in answer to the additional statement filed by the II Party *inter alia* stating that the Union was a registered union.

7. For the I Party the aggrieved worker and the President of the Union have been examined. Five witnesses were examined for the II Party.

8. The first three issues can be considered together. The first witness examined for the I Party is Sri N. L. Nagappa the President of the Mandya District General Workers Union, Mandya. The certificate of registration, dated 27th November 1962 issued to the union had been produced and marked Exhibit W. 1. The Union had been registered (No. 547) under the Indian Trade Unions Act by the Registrar of Trade Unions for Mysore State, Bangalore. The membership book of the union had been marked Exhibit W. 3. He has also produced the application given by Syed Abbas for becoming a member of the Union. It is, dated 2nd August 1965 and marked Exhibit W. 8. A receipt for having paid the subscription has been produced by Syed Abbas and marked Exhibit W. 9. The minute book of the Union has been produced and marked Exhibit W. 4. In that there is a resolution recorded of certain of the workers of the Rice and Oil Mills of the II Party requesting that the case of Syed Abbas may be taken up by the union and an industrial dispute raised. The meeting is said to have been held on 9th July 1966 in the office of the union. Thereupon the President of the Union sent a demand to the management. That such a demand was sent is admitted and the original notice, dated 18th July 1966 has been produced by the II Party and marked Exhibit M. 2. Syed Abbas (W.W. 2) has also deposed that he became a member of the Union in August 1965. His evidence is that the other workers were asking him to become a member even earlier and he has also signed the proceedings of the first meeting wherein the formation of the union was resolved upon on 27th April 1962. The union was of the workers of the saw mills, rice and oil mills, motor industries, etc., in Mandya District. That there was such an union registered long prior to this dispute cannot be doubted in view of the certificate of registration. It was elicited during the cross-examination of Sri Nagappa that according to the proceedings book there was only one general body meeting on 27th April 1962 and a meeting of the Executive Committee on 9th December 1962. But Nagappa also stated that meetings of workers of different industries were held as and when occasion arose. This is borne out from Exhibit W. 4. It was urged by Sri Chennakeshavaiah appearing for the II Party that it had not been proved that Sri Nagappa was the President in subsequent years. The rules of the Union (Exhibit W. 2) indicate that the President continues until a next

President is elected. It is not urged or shown that the registration of the union had been cancelled on the ground of there being no general body meetings or for any other reason. The right of the union to take up the cause of workman who is its member and the representation of the same by its President cannot therefore be assailed.

9. At the instance of the I Party the attendance registers of the workers in the rice mill section have been produced and those for the period March 1965 to November 1965 and for the period 1st June 1966 to 31st December 1966 have been marked Exhibit M. 15 and M. 17 respectively. They disclose that in the months of October 1965 and July 1966 there were 36 workers in the rice mill section. The resolution, dated 9th July 1966 in the proceedings book of the union purports to bear the thumb marks and signatures of 12 persons who were workings in the rice and oil mill. It is seen that eleven of them were working in the rice mill section and one in the oil mill section. The membership book of the union contains the names of all these workers and several others. It is therefore clear that a number of workers of the establishment sporsored the cause of the worker Syed Abbas and wanted the union to pursue the matter. What is a substantial number in order to make a dispute a collective on depends on the facts of each case. The number of workers who supported and sponsored the cause of Syed Abbas is in my opinion, a substantial one. It was urged by Sri Channakeshavaiah that the thumb marks of the workers had not been attested and they were illiterate persons and the mere record in the book could not be treated as proof of the support of the workmen. The record gives the names of the persons against each thumb mark and Sri Nagappa has deposed that he has written the names of the persons against their thumb marks which are six in number. What is sought to be made out is that the scribe who has written that has not been specified. This is immaterial. I do not find any justification to doubt the genuineness of the resolution. It was pointed out that Syed Abbas was not a signatory to it. It is obvious that the resolution was by his co-workers and to support his cause and his signature to it was unnecessary and the absence of his signature cannot affect it. Syed Abbas has deposed that he was present in that meeting and did not sign the proceeding as he had to go away on some other work. Sri Nagappa, during the course of his evidence. stated that during the conciliation proceedings the *locus standi* of the union or Syed Abbas being a member of the Union was not challenged. The record of the conciliation proceedings which has been produced at the instance of the I Party discloses that the President of the Union represented the worker and the conciliation proceedings had been taken on hand on the initiative of the Union and apparently no objection was taken in this behalf.

10. The II Party had called upon the I Party to produce the counter foil of the receipts in regard to the members but they were not produced on the ground they were with the auditors. But in regard to Syed Abbas having become a member the application given by him and the original receipt for having paid the admission and subscription and the entry of his name in the membership register are *prima facie* evidence and establish the fact and corroborate the oral testimony in this behalf. The application form Exhibit W. 8 contains an entry R. No. 762—2nd August 1965 and the receipt Exhibit W. 9 bears the Number 418. Sri Channakeshavaiah submitted that the noting on the application indicates the receipt number and the number on the receipt being different the latter is not genuine. No question was put to Nagappa in regard to the number on the application and there arising any discrepancy in regard to the receipt issued to the worker. Syed Abbas during the course of his evidence stated that he had one receipt with him at home and the others had not been preserved. He filed it into court on 14th September 1968 and Sri Channakeshaviah stated that he had no questions to put to him in this behalf There is also no basis to hold that the number on the application represents the number of the receipt issued to the member and thereby doubting the genuiness of the receipt Exhibit W. 8.

11. It was again urged that in the membership register there had been a note by the Labour Officer, Mysore on 17th May 1966 that there were no entries in it for 1964 to 1965 and subsequently the entries were written up and in that the name of Syed Abbas as a member was included. It may be that as on 17th May 1966 the register had not been brought up-to-date. But only on that ground the membership of Syed Abbas in 1965 August cannot be doubted. It was also pointed out that a worker Sl. No. 32 had become a member in July but his name had been entered after Sl. No. 31 of Syed Abbas. This only indicates that the names of the members had been compiled and entered as the entires came to be made subsequently. One of the witnesses examined for the II Party Syed Ibrahim has admitted that Syed Abbas had become a member of the union but he could not say whether the management knew about it. Thus the membership of Syed Abbas in the union has been admitted by a co-worker. It was urged that these were four drivers in all and none of the other three drivers had supported the cause of Syed Abbas and therefore there was no support by the workers. It is not merely a support of a particular category that has to be taken note of but that of a substantial number of workers in the establishment. It is in the evidence of Honnaiah the maistry examined for the II Party that there used to be differences between Syed Abbas and the other drivers and this started after one Gangaraju was appointed as driver. In these

circumstances support from the other drivers could not be expected. Having regard to the entire evidence and circumstances noticed above I hold on issues 1 to 3 that the dispute, before the reference was made by Government, had become an industrial dispute as it had been sponsored by a substantial number of workmen in the establishment and the workman was a member of the union even prior to the dispute and the union was one which comprised of workers of the establishment and had fallow up the cause. The reference by the Government is therefore of an industrial dispute and is valid, and this court has jurisdiction to adjudicate upon it. The union has the right to represent him in the proceedings and can do so.

12. The termination of the service of the workman was on 1st December 1965 though with effect from 21st October 1965. By virtue of Section 2-A of the Industrial Disputes Act which came into force on 1st December 1965 a dispute in regard to the discharge, dismissal or termination of service of an individual workman is deemed to be an industrial dispute notwithstanding that it is not supported by the co-workers or any union. The jurisdiction of the Government to refer a dispute for adjudication has to be considered with reference to the date on which it decides to refer it and by that time the dispute should have acquired the character of an industrial dispute (*Vide* 1961 II LLJ 436 and 1962 I LLJ 409). A reference of a dispute after the coming into force of Section 2-A in regard to dismissal of an individual workman would by its very terms be of an industrial dispute even though the dismissal may be anterior to the coming into force of Section 2-A (*Vide* 1968 II LLJ 85). Therefore in view of Section 2-A of the Industrial Disputes Act also the objection raised that the dispute is not an industrial dispute cannot be upheld and the points of objection covered by issues 1to 3 would have to fail.

13. From what is stated in the statement of the II Party it is clear that no enquiry was made in regard to the charge levelled against the worker in the notice, dated 21st October 1965 and after he submitted an explanation. The reason given for the omission to do so is that the whereabouts of the worker was not known. The Manager of the Taluk Agricultural Produce Co-operative Marketing and Processing Society Ltd., Malavalli was examined by the II Party with a view to show that the worker had got himself employed in that establishment from 6th December 1965 to 14th May 1966. This would be after the purported order of termination made on 1st December 1965. There is absolutely no evidence that the workman was not at Mandya subsequent to 21st October 1965 and before he joined the Malavalli Society. Not one of the witnesses examined for the II Party speaks about his unavailability at Mandya. In the letter Exhibit M. 4 given by the worker, dated

9th July 1962 wherein he requested to be taken to duty in the mills and at the time he came to be employed he has given the particulars of his residence. No evidence has been placed that any communication was sent by post or otherwise fixing any date or enquiry or any attempt was made to send a communication by registered post with acknowledgement due and any such communication was reserved unserved. It is quite clear that no steps at all were taken to hold an enquiry in spite of the specific request made by the worker in his representation after he was served with the notice of suspension. The reason given in the office order terminating his service is that he has absconded from the mills work. It is obvious that the dismissal was not on the ground of any proved misconduct. The reports of the drivers as per Exhibit M. 10 to M. 13 were not in the presence of the aggrieved worker and no copies of them had been furnished to the worker and he had no opportunity to cross-examine them or put forth his defence. The termination order cannot be upheld in these circumstances. It is a case of termination of services without any enquiry. If the worker did not present himself for duty it was because of the order of suspension from duty without fixing any time limit: the absence would be because he was prevented from attending to duty. The evidence of Syed Abbas is that he was paid salary for 20 days of October on 1st November 1965 and Lingappa the cashier paid him the amount. This is not challenged in cross-examination. So he must have come to the office on that day. The ground for termination, *viz.*, absconding from duty to say the least is unwarranted. It can more properly be characterised as exhibiting utter indifference and wanton attempt at finding a pretext. The plea of Syed Abbas leaving the job voluntarily is untenable. Accordingly issue 4 is answered in favour of the I Party and issues 5 and 6 against the II Party. The date of termination of the services was on 1st December 1965 though with effect from 21st October 1965. This is my finding on issue No. 7. There is no proof that the suspension order was cancelled at any time. This is my finding on issue 6.

14. It is now settled that even in such a case of dismissal without enquiry it is open to the management to justify the dismissal by adducing evidence before this court. With this end in view the four witnesses M.W. 2 to M.W. 5 have been examined for the II party. Except Lakshmana Singh the other two drivers have been examined.

15. M.W. 2 Chikkanna was the manager in the Rice Mill. He purports to have received a complaint from the Maistry Honnaiah and made a report on the morning of 21st October 1965. He also purports to have received complaints from the three other drivers on the morning of 21st October 1965 and handed them over to the Secretary along with his report. The report Exhibit M. 9 made by him indicates that the complaint was brought to his notice at

8-30 A.M. on 21st October 1965. He does not purport to be an eye-witness to any incident on the night of 20th October 1965. The complaint of Honnaiah the maistry bears the date 20th October 1965. The complaints of the two drivers Gangaraju and Lakshmanasingh also bear the date 20th October 1965. The complaint of Mohamed Ibrahim bears the date 21st October 1965. According to Chikkanna the manager the date 20th October 1965 put in Exhibit M-13 the complaint of Lakshmanasingh is a mistake for 21st October 1965. This appears to be so as the contents bear out that he was referring to the incident on the previous night. From a reading of Exhbit M-11 the complaint of Gangaraju, it indicates that he refers to have started the mill in the morning after receiving instructions from the Secretary and with the help of Lakshmanashingh and therefore the date 20th October 1965 on it also is a mistake for 21st October 1965.

16. The complaint Exhibit M-10 given by Honnaiah makes an assertion that Abbas had removed the lever plank of the speeding box compartment and gone away and for about a mouth he was doing some mischief or other every day and that on his enquiry Ibrahim stated that he had complained against Abbas. The complaint Exhibit M-11 of Gangaraju also makes an assertion that Abbas had removed the plank. Mohamed Ibrahim was the driver who had worked the Dandekar machine during the second shift. According to his complaint Exhibit M-12 the mill had worked properly and he had gone home and at that time Gangaraju was lying down on the sands outside the mill. Thereafter, he had been sent for from his house and then he found a peg inserted behind the sheller. However he asserted that Abbas was the man who had done this. Lakshmana Singh in his report Exhibit M-13 however only stated that in the morning when he came for work Gangaraju told him that Abbas had spoilt the machine and as per the direction of the Secretary and Manager he repaired the machine and started it.

17. Chikkanna M.W. 2 does not say that he recorded any of the complaints M-10 to M-13. During his examination-in-chief he stated that when the Secretary came in the morning he asked him whether he had enquired the drivers and he told him that he had enquired the maistry, Gangaraju, Ibrahim and Lakshmana Singh and they had told him that Syed Abbas was the only driver in the second shift and he had broken the speed box and they had seen it and handed him over the complaints and his report. During the cross-examination howver he was specific and stated "The drivers or maistry did not tell me that they had actually witntssed Syed Abbas breaking the speed box. What they told me was that he could be the only person who would have done it." When his attention was drawn to the portion in the complaint Exhibit M-12 of Ibrahim that he had seen it being done by Abbas, he deposed that it does

not mean that he actually saw him break it on that day and what he meant was that it must have been done by Abbas. That this is so is clear even from Exhibit M-12 because Ibrahim says in that he worked the machine and left at 12-15 P.M. and while he was in charge of it had worked well only later he was called from his home. Honnaiah M.W. 3 the maistry specifically stated in cross-examination. "I have not witnessed Syed Abbas removing the separator speed box". Further on he stated "At the time I came to the mill Mohammad Ibrahim had left for his house and only Syed Abbas was working. He was moving between Dandekar mill and Satake Mill. After the Dandekar mill was started for the 3rd shift the trouble was noticed. I sent for Mohammad Ibrahim. He said that the mill had worked properly in the 2nd shift and he had stopped it correctly and he was not responsible for the breaking of the separator speed box. Therefore as Syed Abbas was the only person in the mill at that time I reported that he had done it." During re-examination he stated "I do not know if Syed Abbas had come near Dandekar mill during the 2nd shift. He did not commence it during the 3rd shift". During his cross-examination he also stated that he was not present when the drivers gave any report to the manager.

18. According to Ibrahim he left the mill at 12-15 P.M. in the night after stopping the Dandekar mill and at that time the maistry Honniah came in for the 3rd shift. About one hour later he was called from his house and saw the plank of the separator speed box having broken and rice spilling out. Honnaiah asked him why it had happened so and he replied that he had stopped the machine in good order and he became frightened and then told Honnaiah that when he was just going out he had seen Syed Abbas coming towards Dandekar machine and Honnaiah took down what he stated. No such statement recorded by Honnaiah is produced into court. Further on during the cross-examination when the statement Exhibit M-12 was brought to his attention he admitted having signed it but stated that he did not know Kannada and Honnaiah must have recorded it when he questioned him in the night. But even according to Ibrahim he had only seen Abbas coming near the Dandekar mill and did not ask him why he was coming near it and thought he was going to the office to drink water. He also stated that in the morning he only told the manager that he had seen Abbas coming near the separator box. Such a statement is not to be found in Exhibit M-12 and the assertion in it that he had seen Abbas doing it is without any basis. Gangaraju was the person who had to work the Dandekar mill during the third shift. According to Ibrahim, Gangaraju had not come in when he left and was lying down on the sands out side and at that time Honnaiah was there and he told him that he would go and went out with his permission. It would therefore appear that Honnaiah was inside the mill when Ibrahim

left and before Gangaraju came in. If so Abbas could not have an opportunity to do any mischief in his presence. Further on he stated that the plank of the separator speed box could be removed by any one who was bent on mischief and it could be done even by Gangaraju. According to Ibrahim the manager did not enquire the other drivers in his presence and he did not know if any of the other drivers were enquired. He had also been suspended on 21st October 1965 at 4 P.M. but he was taken to dutv on 24th October 1965.

19. The shift of Gangaraju had to commence at 12 NOON (III shift). According to Gangaraju he had come to the mill at 10-30 P.M. and as there was still time for the III shift he lay down and fell asleep. At about 12-30 P.M. in the night the maistry Honnaiah woke him up and then he went in and started the machine and thereafter found the plank come out and the rice spilling away. Therefore he complained to Honnaiah that this was happening every day and he may see and that the machine cannot be worked and stopped it. He slept away on the bags. The third shift in the Japan mill worked. Syed Abbas worked in the 2nd shift and also the 3rd shift. According to Gangaraju at about 3 A.M. Syed Abbas came near the Dandekar mill with a screw driver to repair it but he protested saying that it was his shift and his responsibility and he should not touch it until the sahib came to see it. On hearing this noise the maistry and other workers came there and then Abbas went back to his machine. He gave tht report Exhibit M-11 only in the morning and according to him Honnaiah recorded it. This report does not contain any averment about Abbas coming near the Dandekar mill at 3 A.M. and there being any altercation between him and Abbas. Gangaraju admitted that he had not got this recorded. This shows an inclination on his part to make improvements. The attempt appears to be to raise an inference of a guilty mind in Abbas and thereby imposing on him an attempt to repair the mischief. This is clearly an after thought. In Exhibit M-11 there is an averment of Abbas placing a wooden box under the sheller lever. When questioned about this Gangaraju stated that he had not seen Abbas placing it any time. From the circumstances it is seen that Gagaraju had to be woken up for his shift and it appears he was unwilling to work. The fixing of plank of the separator that had come off appears to be a simple matter and it was done in the morning. From what Gangarapu has stated this appears to have been happening every day. The possibility of it having been kept loose by Ibrahim before he left the II shift even unwittingly cannot be ruled out. It is obvious that Gangaraju did not take charge from Ibrahim. It is elicited from Ibrahim that the driver should leave only after the reliever comes and after handing him over charge. It would appear that Ibrahim was in the mill till 12-15 and as Gangaraju had not come in he left after informing the maistry. Obviously Gangaraju did not observe the

machine before starting it and was quick enough to stop it as he found rice spilling away and stopped working during the night on this pretext. The possibility of Gangaraju himself being responsible cannot be ruled out as he had been woken up from his sleep and on account of his negligence in operating the machine or deliberately

20. The presence of Abbas in the mill was legitimate as he had to work in the 2n dshift and also the 3rd shift on overtime. His presence cannot be an incriminating circumstance against him. The accusation made against him by the drivers and the maistry merely on the circumstance of his presence is entirely conjectural. It is in the evidence of Honnaiah that the trouble started after Gangaraju came to be employed. Ibrahim obviously is interested in disowning responsibility as he was the person in charge of the Dandekar mill during the 2nd shift. The attempt of Gangaraju to involve Abbas appears to be motivated and with a view to absolve himself from work during the 3rd shift. The reports given by them attempt to make out a fact as if seen by them which is not borne out from the evidence.

21. It was sought to be made out that there were earlier complaints about mischief by Abbas. According to Chikkanna about a month prior to 21st October 1965 Gangaraju had handed over to him a wooden block (which has been produced before court and marked M.O. 1) stating that he had heard some noise when the machine was started and on observing found it underneath the sheller lever rod. He deposed that Abbas was the driver in the previous shift and on questioning him he had denied any responsibilty for that. According to him complaints had been made to him on two or three occasions and he had orally advised Abbas not to behave in this manner. He however admitted that when he had received complaint in regard to M.O. 1 he had not issued any written notice to Abbas and between 1962 and 1965 he had not issued any notice to him that he was doing mischief in the mill. Even the maistry deposes that he had orally complained and not in writing. It is incredible that no action would have been taken if there was such persistent misbehaviour. I am of the opinion that the allasion to persistent mischief in the notice issued on 21st October 1965 is without any basis. Abbas has denied that he had been appraised of any complaint before 21st October 1965.

22. I am of the opinion that the evidence adduced in order to establish the charge levelled against Syed Abbas is conjectural in nature and no reliance can be placed on it. When the conciliation proceedings were initiated and the management was notified the Secretary of the Mills wrote back to the Labour Officer in his letter, dated 31st August 1966 (Exhibit W-6) that Syed Abbas who was formerly working was not borne on their establishment and he was

working in the Malavalli Society and had left the services in the Mills on 21st October 1965 and therefore the question of he wrongfully being prevented from attending to work did not arise. In that it was not disclosed that his services were terminated by the office order, dated 1st December 1965. This was the attitude attempted to be adopted without justification. The circumstances justify the conclusion that because Syed Abbas had become a member of the I Party union and the other drivers had not joined the union. this was presented by the management and action was taken soon after to level a charge of misconduct on him and it was not pursued in a legal manner and an attempt was made to get rid of him on the ground of abscondence. Having regard to all the circumstances I hold that the termination of the services of Syed Abbas was unjustified and not valid and he is entitled to be reinstated.

23. It is proved that Syed Abbas was in employment between 6th December 1965 and 14th May 1966. Therefore I do not think he should be awarded any back wages for this period. The suspension from 21st October 1965 was not followed by any attempt at enquiry and in these circumstances he should be awarded full wages for the period 21st October 1965 to 6th December 1965 especially as the office order, dated 1st December 1965 was not communicated to him and it came to be disclosed only during the conciliation proceedings. It is in the evidence of Syed Abbas that once in a way he was going to Gopalakrishna Rice Mills at Kethamgere near Mandya for repair work. Having regard to all the circumstances I am of the opinion that it would be just to award the aggrieved worker back wages only from 15th May 1966 to date of reinstatement and only at the rate of 50 per cent of the wages he would have been entitled if in service in the mills. I therefore pass the following award :—

1. The termination of the services of Syed Abbas with effect from 21st ctober 1965 is unjustified and he is entitled to be reinstated as mill driver in the Ryots Agricultural Produce Co-operative Marketing Society Rice Mills. Mandya with continuity of service with effect from 21st October 1965 and the II Party shall so reinstate him.

2. The II Party shall pay full wages due to the worker Syed Abbas for the period 21st October 1965 to 6th December 1965.

3. The II Party shall pay to the said worker wages at the rate of 50 per cent of the wages he would have been entitled to if in service for the period 15ht May 1966 to the date of reinstatement.

4. The II Party shall pay to the said worker costs of these proceedings which are hereby assessed at Rs. 100.

(Sd.) M. K. SRINIVASA IYENGAR,
Presiding Officer,
Labour Court, Bangalore.

"Copy"

M. K. Srinivasa Iyengar,
Presiding Officer,
Labour Court, Bangalore.